

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARK ANTHONY SMITH,

Defendant-Appellant.

UNPUBLISHED

April 11, 1997

No. 185451

Macomb Circuit Court

LC No. 94-000154

Before: Holbrook, Jr., P.J. and White and A. T. Davis*, JJ.

MEMORANDUM.

Following a jury trial, defendant was convicted of larceny in a building, MCL 750.360; MSA 28.592. He was sentenced to thirty to forty-eight months' imprisonment. He appeals as of right, and we affirm.

Defendant's conviction arises from his taking property belonging to his mother, Virginia Kujawski, out of an apartment that they were sharing. Kujawski testified that she reported the theft to the police, even though she believed that defendant had stolen the items, because she thought what he did was wrong and was a result of his drug addiction. In his opening statement and closing argument, the prosecutor essentially told the jury that a person with a drug addiction would steal from his own mother.

Defendant argues that the prosecutor's closing argument amounted to unsworn testimony regarding the behavior of drug addicts, effectively inviting the jury to convict defendant based on his drug addiction. Because defendant failed to object at trial to the alleged prosecutorial misconduct on the grounds raised on appeal, appellate review is precluded, unless failure to review the issue would result in a miscarriage of justice, or if a cautionary instruction could not have cured the prejudicial effect. *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994). We conclude that our failure to review the issue further will not result in a miscarriage of justice. The court cautioned the jury after opening statement that they should not convict defendant based on a belief that he was addicted to drugs. The court also instructed the jury at the close of proofs that the attorneys' statements were not

* Circuit judge, sitting on the Court of Appeals by assignment.

evidence, and that they could only convict defendant if they found him guilty of the crime charged beyond a reasonable doubt. Further, the evidence against defendant was overwhelming.

Defendant also argues that he was wrongly convicted of larceny in a building because the statute does not apply to a theft committed on premises where the defendant resided. Specifically, defendant argues that he did not invade a protected privacy right because he was lawfully on the premises. However, nothing in MCL 750.360; MSA 28.592 leads us to conclude that the Legislature intended to preclude a defendant from being convicted for committing a larceny within the dwelling in which he resides. Therefore, defendant was properly convicted of larceny from a building based on his taking of his mother's personal property from their apartment without her consent. *People v Mumford*, 171 Mich App 514, 518; 430 NW2d 770 (1988).

Affirmed.

/s/ Donald E. Holbrook, Jr.

/s/ Helene N. White

/s/ Alton T. Davis